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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,752	02/08/2005	Klemens Kieninger	502901-330PUS	2727
27799	7590	05/11/2010		
COHEN, PONTANI, LIEBERMAN & PAVANE LLP				
551 FIFTH AVENUE				
SUITE 1210				
NEW YORK, NY 10176				
EXAMINER				
FREAY, CHARLES GRANT				
ART UNIT		PAPER NUMBER		
3746				
MAIL DATE		DELIVERY MODE		
05/11/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/523,752

**Applicant(s)**

KIENINGER ET AL.

**Examiner**

Charles G. Freay

**Art Unit**

3746

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on April 21, 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 21, 2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is vague and indefinite because it sets forth that the pot is connected to the sidewall between the top and bottom. As shown in Fig. 7 the pot has a connection point at the top of the side wall but the bottom of the pot is between the top and the bottom.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 6, 10, 12 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Engels (EP 1 378 670).

Engels discloses a suction jet pump comprising a propulsion jet nozzle having a round orifice 3, an intake orifice connected to a suction line 7, wherein only the outlet orifice of a mixing tube 8 and the mixing tube are arranged in a pot 12 which is directly connected near the top of a side wall 15 of a baffle. As shown in the figures the jet pump does not feed against the volume of the baffle. The mixing tube is perpendicular to the bottom of the pot. The pot and the jet pump are fluidly connected.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 7, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engels in view of Sawert (USPN 5,139,000).

As set forth above Engels discloses the invention substantially as claimed but does not disclose that the mixing tube is arranged at an angle deviating from perpendicular, the jet pump being connected by a latch or plug connection or the baffle being U-shaped. Sawert, as discussed in previous office actions, discloses a U-shaped baffle 12, 20 having a pot 64 connected thereto and a jet pump having a mixing tube 72 plug connected to the pot and parallel to the bottom of the pot. At the time of the invention it would have been obvious to one of ordinary skill in the art make the pot U-shaped as taught by Sawert, in order to collect the fluid from the pot. Furthermore it would have been obvious to connect the mixing tube parallel to the pot bottom in a plug connection as a well known and simple connection and because of the spacial requirements of the pumping system.

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Engels in view of Sawert.

As set forth above Engels in view of Sawert discloses the invention substantially as claimed but does not disclose that the pot and the jet pump are integrally formed. At the time of the invention it would have been obvious to one of ordinary skill in the art to have integrally formed the elements, since it has been held that forming in one piece as article which has formerly been formed of two and put together involves only routine skill in the art. See *Howard v. Detroit Works*, 150 U.S. 164 (1991).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawert as applied to claim 8 above, and further in view of Ramamurthy et al (USPAP 2003/0213477).

As set forth above Engels in view of Sawert discloses the invention substantially as claimed but does not disclose welding or adhesively bonding the pot to the suction jet pump. However, Ramamurthy teaches of a fuel pump module including a reservoir having a jet pump whereby the jet pump is welded to the reservoir (see abstract). At the time of the invention it would have been obvious to one of ordinary skill to connect or bond the pot to the jet pump as disclosed by Sawert through means of welding as taught by Ramamurthy et al to create a secure connection therebetween.

Claims 5 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engels in view of Sawert as applied to claim 3 above, and further in view of Herzog et al.

As set forth above Engels in view of Sawert discloses the invention substantially as claimed but does not disclose the mixing tube connected at a specific angle with regards to the bottom of the pot. Herzog et al disclose a pot having a jet pump and mixing tube nozzle 14 which curve from the perpendicular through a multitude of angles, including those claimed, before entering the pot. At the time of the invention it would have been obvious to one of ordinary skill in the art to arrange the mixing nozzle at an

angle in order to fit the pipe within the space and confines of the tank within which the pump is to be used.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-15 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles G. Freay whose telephone number is 571-272-4827. The examiner can normally be reached on Monday through Friday 8:30 A.M. to 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles G Freay/  
Primary Examiner  
Art Unit 3746

CGF  
May 8, 2010